of the sailor were dependent upon the completion of the voyage. The summary process by which a deserter may be seized and forced to complete the voyage for which he has shipped, is another illustration of the anomalous character of rights arising from this peculiar relation. (Desty, Commerce and Navigation, 187.)

Desertion, from the nature of the offence, has always been punished by heavy penalties, the forfeiture of wages on the part of the offender being among the lightest. In accordance with this view, a recent decision in the United States District Court for Eastern New York holds that compelling a fireman to work overtime, to the extent of fourteen hours in one year, is not sufficient ground for desertion; and that consequently a libel against the vessel for the balance of wages claimed as accrued since the desertion must be dismissed. (See New York Law Journal, Dec. 6, 1897.) The case seems clearly right; abuse, deviation from the voyage, and refusal to supply provisions, have hitherto been recognized as practically the only grounds sufficient to justify a sailor in abandoning his vessel. In other words, these alone have been regarded as breaches that so go to the essence of the contract as to release the other party. If for any of these reasons a mariner abandon his vessel, it is clear that the master could not set up his own wrong to prevent the recovery of all the wages due upon the contract, less what the sailor might have earned in the meanwhile. (*The Castilla*, 1 Hagg. Adm. 59.) But it is only in these cases, where there would be a palpable injustice in compelling the mariner to remain, that he can leave his vessel. The dependence of the captain upon his sailors, the fatal delays that might often ensue were the rule otherwise, show the reasonableness of the law as it stands; and it seems clear that under it the desertion in the present case cannot be justified.

Assignments in Trust for Creditors. — A recent decision in the District of Columbia Court of Appeals (*Smith* v. *Herrell*, see 25 Wash. L. Rep. 822) brings up the question of the necessity of assent on the part of creditors to render enforceable an assignment made in trust for them. That case follows the rule, well settled in most of our jurisdictions, that such assent either is not necessary or is presumed. But the law of England and of Massachusetts is otherwise. The English doctrine, founded principally on the well-known cases of *Wallwyn* v. *Coutts*, 3 Mer. 707, and *Garrard* v. *Lauderdale*, 3 Simon, 1, treats an assignment without the assent of creditors as void of consideration, and amounting merely to a revocable power to dispose of property given to an agent by the debtor for his own convenience. Yet the intention to create a trust would seem to be shown in nearly all the English cases by the words "in trust," without any reservation of a power to defeat that intention being expressed. This, together with the transmutation of possession, would of course create a perfect trust without any consideration. It further seems difficult to require the assent of creditors in view of the numberless trusts that are created for persons absent or not yet in being.

The Massachusetts decisions, beginning with the early case of *Widgerly* v. *Haskell*, 5 Mass. 144, have uniformly supported the English rule. The English courts themselves, however, have recently shown a disposition to depart somewhat from their former doctrine. In the case of *New Prance and Garrard's Trustee* v. *Hunting*, [1897] 2 Q. B. 19, it was decided that an assignment in trust for particular persons is irrevocable, while one for

creditors in general is revocable. The distinction taken is that in the former case the intention of the assignor could only be to benefit the persons named, while in the latter his object might be either to benefit the creditors or to further his own convenience. But here again it may be observed that the circumstances of a case must indeed be strong to show in the face of the words "in trust for creditors" that the debtor made the assignment for his own convenience, and not for the benefit of his creditors. Furthermore, all the reasons of policy would seem to lead rather to the American doctrine. Assignments in trust for creditors should be supported whenever possible; and to dispense with the delay caused in obtaining the creditors' assent is obviously of benefit in transactions where prompt action and despatch are especially desirable.

RECENT CASES.

AGENCY — APPLIANCES — ASSUMPTION OF RISK. — A master promised a servant to remove a defect in certain machinery. *Held*, that the servant may rely on the promise and continue in the service without assuming the risk, only for such time as is reasonably sufficient to enable the master to remedy the defect. Three judges dissenting. *Illinois Steel Co.* v. *Mann*, 48 N. E. Rep. 417 (Ill.).

The dissenting judges proceed on the ground that the test is whether such a time has elapsed that it would be unreasonable for the servant to rely longer on the master's promise, and not whether the master has had a reasonably sufficient time in which to make the repairs. This precise point has seldom been discussed. The question is one of intention, for whenever the servant must be taken to have assumed the risk, the liability of the master ceases. Mechem, Agency, §§ 660, 661. In applying the rule of the principal case, it might happen that the master's liability would terminate while the repairs were in course of completion, but this result would be very unreasonable. There is some loose language in the books supporting the decision, but the dissenting opinion is preferable, as it is unjust to hold that the servant intends to assume the risk so long as he may reasonably expect the master's promise to be performed. Shearm. & Red., Neg. § 96; *Eureka Co.* v. *Bass*, 81 Ala. 200.

AGENCY — BANKS — DRAFT FOR COLLECTION. — The plaintiff placed a draft for collection with a bank. The bank exercised reasonable care in the selection of sub-agents necessarily employed to do the work, and seasonably transmitted the draft through such sub-agents to the place of payment. *Held*, that on default of one of these sub-agents the bank was not liable to the plaintiff for the amount of the draft. *Irwin* v. *Reeves Pulley Co.*, 43 N. E. Rep. 601 (Ind.); *State National Bank* v. *Thomas Mfg. Co.*, 42 S. W. Rep. 1016 (Tex.).

There is much conflict of authority as to the liability of a bank to one who deposits with it a draft for collection in a distant place. In the federal courts, in New York, and in some other States, the bank is held to be an independent contractor, and so liable to the depositor for any default of its correspondents. *Exchange National Bank* v. *Third National Bank*, 112 U. S. 276; *Allen* v. *Merchants' Bank*, 22 Wend. 215. In other States the doctrine of the principal case prevails. *Dorchester Bank* v. *New England Bank*, 1 Cush. 177. The question is really one of fact. It would seem that from the nature of the case there is an implied authority for the appointment of sub-agents by the collecting bank. The latter is not expected to collect personally, and the better view seems to be that it ought not to be held to anything more than reasonable skill and ordinary diligence in the selection of its correspondents. Mechem on Agency, § 514.

BILLS AND NOTES — PURCHASER FOR VALUE — COLLATERAL SECURITY. — *Held*, that the holder of a note on collateral security for an antecedent indebtedness is not a purchaser for value. *Noteboom* v. *Watkins*, 72 N. W. Rep. 766 (Iowa).

The doctrine of the principal case has been strongly supported, notably in New York. *Stalker* v. *M'Donald*, 6 Hill, 93. The better view is against it. Bigelow on Bills and Notes, 216; 1 Daniel, Negotiable Instruments, § 826. It is generally said that the consideration is the obligation imposed on the creditor by becoming the holder of